

IC 6-5.5

ARTICLE 5.5. TAXATION OF FINANCIAL INSTITUTIONS

IC 6-5.5-1

Chapter 1. Definitions

IC 6-5.5-1-1

Application of definitions

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-2

"Adjusted gross income" defined

Sec. 2. (a) Except as provided in subsections (b) through (d), "adjusted gross income" means taxable income as defined in Section 63 of the Internal Revenue Code, adjusted as follows:

(1) Add the following amounts:

(A) An amount equal to a deduction allowed or allowable under Section 166, Section 585, or Section 593 of the Internal Revenue Code.

(B) An amount equal to a deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(C) An amount equal to a deduction or deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by a state of the United States or levied at the local level by any subdivision of a state of the United States.

(D) The amount of interest excluded under Section 103 of the Internal Revenue Code or under any other federal law, minus the associated expenses disallowed in the computation of taxable income under Section 265 of the Internal Revenue Code.

(E) An amount equal to the deduction allowed under Section 172 or 1212 of the Internal Revenue Code for net operating losses or net capital losses.

(F) For a taxpayer that is not a large bank (as defined in Section 585(c)(2) of the Internal Revenue Code), an amount equal to the recovery of a debt, or part of a debt, that becomes worthless to the extent a deduction was allowed from gross income in a prior taxable year under Section 166(a) of the Internal Revenue Code.

(G) Add the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal

Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(2) Subtract the following amounts:

(A) Income that the United States Constitution or any statute of the United States prohibits from being used to measure the tax imposed by this chapter.

(B) Income that is derived from sources outside the United States, as defined by the Internal Revenue Code.

(C) An amount equal to a debt or part of a debt that becomes worthless, as permitted under Section 166(a) of the Internal Revenue Code.

(D) An amount equal to any bad debt reserves that are included in federal income because of accounting method changes required by Section 585(c)(3)(A) or Section 593 of the Internal Revenue Code.

(E) Subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation.

(b) In the case of a credit union, "adjusted gross income" for a taxable year means the total transfers to undivided earnings minus dividends for that taxable year after statutory reserves are set aside under IC 28-7-1-24.

(c) In the case of an investment company, "adjusted gross income" means the company's federal taxable income multiplied by the quotient of:

(1) the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of Indiana; divided by

(2) the total amount of gross payments collected during the taxable year by the company from the business upon investment contracts issued by the company and held by persons residing within Indiana and elsewhere.

(d) As used in subsection (c), "investment company" means a person, copartnership, association, limited liability company, or corporation, whether domestic or foreign, that:

(1) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); and

(2) solicits or receives a payment to be made to itself and issues in exchange for the payment:

(A) a so-called bond;

(B) a share;

(C) a coupon;

(D) a certificate of membership;

(E) an agreement;

(F) a pretended agreement; or

(G) other evidences of obligation; entitling the holder to anything of value at some future date, if the gross payments received by the company during the taxable year on outstanding investment contracts, plus interest and dividends earned on those contracts (by prorating the interest and dividends earned on investment contracts by the same proportion that certificate reserves (as defined by the Investment Company Act of 1940) is to the company's total assets) is at least fifty percent (50%) of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year. The term "investment contract" means an instrument listed in clauses (A) through (G).

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.15; P.L.68-1991, SEC.1; P.L.8-1993, SEC.94; P.L.28-1997, SEC.20; P.L.119-1998, SEC.13; P.L.273-1999, SEC.52; P.L.105-2003, SEC.4.

IC 6-5.5-1-3

"Business of a financial institution" defined

Sec. 3. "Business of a financial institution" has the meaning set forth in section 17(d) of this chapter.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-4

"Commercial domicile" defined

Sec. 4. "Commercial domicile" means:

(1) for a regulated financial corporation:

(A) the taxing jurisdiction under the laws of which it is organized; or

(B) if it is organized under the laws of the United States, the place designated as its principal office with the regulatory authority;

(2) if it is a foreign bank, the state where it has established a federal agency or federal branch under Section 4 of the International Banking Act of 1978 (12 U.S.C. 3102) or if it transacts business in more than one (1) state, its home state as provided in Section 5(c) of the International Banking Act of 1978 (12 U.S.C. 3103(c)); or

(3) for all other entities, the principal place from which the trade or business of the entity is directed or managed.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-5

"Compensation" defined

Sec. 5. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-6**"Corporation" defined**

Sec. 6. "Corporation" means an entity that is:

- (1) a corporation (as defined in Internal Revenue Code Section 7701(a)(3)) for federal income tax purposes, including an entity taxed as a corporation under the Internal Revenue Code; and
- (2) organized under the laws of the United States, this state, any other taxing jurisdiction, or a foreign government.

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.16.

IC 6-5.5-1-7**"Department" defined**

Sec. 7. "Department" refers to the department of state revenue.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-8**"Employee" defined**

Sec. 8. "Employee" has the same meaning as it has for purposes of federal income tax withholding under Sections 3401 through 3404 of the Internal Revenue Code.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-9**"Foreign bank" defined**

Sec. 9. "Foreign bank" means an entity organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands that engages in the business of a financial institution or a subsidiary or affiliate organized under those laws of such an entity. The term includes foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities that are usually in connection with the business of a financial institution in the countries where the foreign institutions are organized or operating.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-10**"Gross income" defined**

Sec. 10. "Gross income" means gross income (as defined in Section 61 of the Internal Revenue Code) for federal income tax purposes.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-11**"Internal Revenue Code" defined**

Sec. 11. "Internal Revenue Code" has the meaning set forth in IC 6-3-1-11.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-12

"Nonresident taxpayer" defined

Sec. 12. "Nonresident taxpayer" means a taxpayer that:

- (1) is transacting business within Indiana, as provided in IC 6-5.5-3; and
- (2) has its commercial domicile outside Indiana.

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.68-1991, SEC.2.

IC 6-5.5-1-13

"Resident taxpayer" defined

Sec. 13. "Resident taxpayer" means a taxpayer that:

- (1) is transacting business within Indiana, as provided in IC 6-5.5-3; and
- (2) has its commercial domicile in Indiana.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-14

"Subsidiary" defined

Sec. 14. "Subsidiary" means:

- (1) a corporation fifty percent (50%) or more of whose voting stock; or
- (2) an entity other than a corporation that is taxed as a corporation under the Internal Revenue Code and fifty percent (50%) of whose net worth;

is owned by another legal entity.

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.17.

IC 6-5.5-1-15

"Taxable year" defined

Sec. 15. "Taxable year", with respect to a taxpayer, means the taxable year of the taxpayer as shown on the taxpayer's return required to be filed under the Internal Revenue Code. If a taxpayer does not file a return under the Internal Revenue Code, the taxpayer's taxable year is the calendar year.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-16

"Taxing jurisdiction" defined

Sec. 16. "Taxing jurisdiction" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

As added by P.L.347-1989(ss), SEC.1.

IC 6-5.5-1-17

"Taxpayer" defined

Sec. 17. (a) "Taxpayer" means a corporation that is transacting the business of a financial institution in Indiana, including any of the following:

- (1) A holding company.

(2) A regulated financial corporation.

(3) A subsidiary of a holding company or regulated financial corporation.

(4) Any other corporation organized under the laws of the United States, this state, another taxing jurisdiction, or a foreign government that is carrying on the business of a financial institution.

(b) As used in this section, "holding company" means a corporation registered under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 through 1849), as in effect on December 31, 1990, or registered as a savings and loan holding company other than a diversified savings and loan holding company (as defined in Section 10(a)(F) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a(1)(F)), as in effect on December 31, 1990).

(c) As used in this section, "regulated financial corporation" means:

(1) an institution, the deposits, shares, or accounts of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 through 1833e), as in effect on December 31, 1990;

(2) an institution that is a member of a Federal Home Loan Bank;

(3) any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

(4) a credit union incorporated and organized under the laws of this state;

(5) a production credit association organized under 12 U.S.C. 2071, as in effect on December 31, 1990;

(6) a corporation organized under 12 U.S.C. 611 through 631 (an Edge Act corporation), as in effect on December 31, 1990;

(7) a federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101, as in effect on December 31, 1990); or

(8) a trust company formed under IC 28-12.

(d) For purposes of this section and when used in this article, "business of a financial institution" means the following:

(1) For a holding company, a regulated financial corporation, or a subsidiary of either, the activities that each is authorized to perform under federal or state law, including the activities authorized by regulation or order of the Federal Reserve Board for such a subsidiary under Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)), as in effect on December 31, 1990.

(2) For any other corporation described in subsection (a)(4), all of the corporation's business activities if eighty percent (80%) or more of the corporation's gross income, excluding extraordinary income, is derived from one (1) or more of the following activities:

(A) Making, acquiring, selling, or servicing loans or extensions of credit. For the purpose of this subdivision,

loans and extensions of credit include:

- (i) secured or unsecured consumer loans;
- (ii) installment obligations;
- (iii) mortgage or other secured loans on real estate or tangible personal property;
- (iv) credit card loans;
- (v) secured and unsecured commercial loans of any type;
- (vi) letters of credit and acceptance of drafts;
- (vii) loans arising in factoring; and
- (viii) any other transactions with a comparable economic effect.

(B) Leasing or acting as an agent, broker, or advisor in connection with leasing real and personal property that is the economic equivalent of the extension of credit if the transaction is not treated as a lease for federal income tax purposes.

(C) Operating a credit card, debit card, charge card, or similar business.

As used in this subdivision, "gross income" includes income from interest, fees, penalties, a market discount or other type of discount, rental income, the gain on a sale of intangible or other property evidencing a loan or extension of credit, and dividends or other income received as a means of furthering the activities set out in this subdivision.

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.18; P.L.8-1991, SEC.4; P.L.68-1991, SEC.3; P.L.1-1992, SEC.18; P.L.119-1998, SEC.14.

IC 6-5.5-1-18

"Unitary business" defined

Sec. 18. (a) "Unitary business" means business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. The term may be applied within a single legal entity or between multiple entities and without regard to whether each entity is a corporation, a partnership, a limited liability company, or a trust, provided that each member is either a holding company, a regulated financial corporation, a subsidiary of either, a corporation that conducts the business of a financial institution under IC 6-5.5-1-17(d)(2), or any other entity, regardless of its form, that conducts activities that would constitute the business of a financial institution under IC 6-5.5-1-17(d)(2) if the activities were conducted by a corporation. The term "unitary group" includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana. However, the term does not include an entity that does not transact business in Indiana.

(b) Unity is presumed whenever there is unity of ownership, operation, and use evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction among entities that are members of the

unitary group, as described in subsection (a). However, the absence of these centralized activities does not necessarily evidence a nonunitary business.

(c) Unity of ownership, when a corporation is involved, does not exist unless that corporation is a member of a group of two (2) or more business entities and more than fifty percent (50%) of the voting stock of each member of the group is directly or indirectly owned by:

(1) a common owner or common owners, either corporate or noncorporate; or

(2) one (1) or more of the member corporations of the group.

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.19; P.L.8-1993, SEC.95; P.L.129-2001, SEC.8.

IC 6-5.5-1-19

"Partnership" defined

Sec. 19. "Partnership" means an association of two (2) or more entities formed to conduct a business, including but not limited to;

(1) a limited partnership, a syndicate, a group, a pool, a joint venture, or an incorporated association; or

(2) a similar entity if the income for federal income tax purposes is taxed to the equity participants in that business, however characterized.

As added by P.L.21-1990, SEC.20.

IC 6-5.5-1-20

"Bonus depreciation" defined

Sec. 20. As used in this article, "bonus depreciation" means an amount equal to that part of any depreciation allowance allowed in computing the taxpayer's federal taxable income that is attributable to the additional first-year special depreciation allowance (bonus depreciation) for qualified property allowed under Section 168(k) of the Internal Revenue Code.

As added by P.L.105-2003, SEC.5.